

**Kelso Coal Co., Inc. and District 17, United Mine  
Workers of America. Case 9-CA-29013**

March 16, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge filed by the Union October 17, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Kelso Coal Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 10, 1992, the General Counsel filed a Motion for Summary Judgment. On February 11, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.

The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Memorandum in Support of Motion for Summary Judgment disclose that the General Counsel notified Respondent on January 28, 1992, by certified mail, of its obligation to file an answer to the complaint and advised it that unless it filed an answer by close of business February 4, 1992, a Motion for Summary Judgment would be filed. The Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation with an office and place of business in Seth, West Virginia, was engaged at all times material as a contract coal miner for Omar Mining Company (Omar). During the 12-month period ending April 18, 1991, the date on which the Respondent ceased doing business as a miner for Omar, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 for Omar. During this time period, Omar, an enterprise engaged in the coal mining business, sold and shipped from its Seth, West Virginia facility coal valued in excess of \$50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. ALLEGED UNFAIR LABOR PRACTICES**

1. The following employees of Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of Respondent engaged in the production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal (except by waterway or rail not owned by Respondent), repair and maintenance work normally performed at the mine site or at a central shop of Respondent and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Respondent, excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

2. Since about April 27, 1988, and at all material times, the Union has been designated the exclusive collective-bargaining representative of the unit and since then has been recognized as the representative by the Respondent. This recognition has been embodied by the Respondent's execution of the National Bituminous Coal Wage Agreement of 1988, whose terms are effective through February 1, 1993.

3. Since on or about May 18, 1991, and continuously thereafter, the Respondent has failed to con-

tinue in effect all terms and conditions of the agreement described above by its abrogation of the terms of the agreement relative to the provision of medical benefits for unit employees.

The Respondent engaged in the above conduct without the Union's consent.

The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

4. Since about June 18, 1991, the Union, by letter, has requested that the Respondent furnish the Union with the following information:

1. Complete copies of any contract(s), agreement(s) or letter(s) of intent to enter into any contract(s) or agreement(s) with any company regarding or contemplating a transfer of any interest, whether that contract is executory or not, in any producing or processing facilities, operations, lands or equipment.

2. What date(s) were the contract(s), agreement(s) or letter(s) of intent to enter into any contract(s), or agreement(s) referred to in question No. 1 above executed?

3. If said contract(s), agreement(s) or letter(s) of intent to enter into any contract(s) or agreement(s) are prospective or executory in nature, when do they take effect and what conditions precedent, if any, must be satisfied before the transfer is effectuated?

4. The names of all signatories to said agreement(s), contract(s) or letter(s) of intent to enter into any contract(s) or agreement(s), and list the addresses, phone numbers and officers of each entity represented by a signatory.

5. The names, addresses, telephone numbers and titles of the person(s) signing on behalf of each signatory company.

6. Detail all payments, royalty provisions, promises, and any other forms of consideration offered in exchange for the transferred lands, producing or processing facilities, operations or equipment.

7. Produce any language in said contract(s) or agreement(s) pertaining to any aspect of labor relations, the National Bituminous Coal Wage Agreement of 1988, your obligations thereunder, or to the United Mine Workers of America.

8. The name(s) and title(s) of the person(s) who prepare or provided the answers to the above information requests.

The information requested by the Union as described above is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about June 18, 1991, the Respondent has failed and refused to furnish the Union with the information requested by it described above.

#### CONCLUSIONS OF LAW

1. By failing to continue in effect the terms and conditions of the collective-bargaining agreement with the Union relative to the provision of medical benefits to the unit employees and by refusing to furnish the Union, on request, with information necessary for and relevant to the Union's function as the exclusive collective-bargaining representative, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

2. The unfair labor practices described above effect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to continue in effect all terms and conditions of the National Bituminous Coal Wage Agreement of 1988 relative to the provision of medical benefits for unit employees and to make its employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We shall order the Respondent to furnish the Union information requested.

#### ORDER

The National Labor Relations Board orders that the Respondent, Kelso Coal Co., Inc., Seth, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to bargain collectively and in good faith with District 17, United Mine Workers of America, by failing and refusing to continue in effect all terms and conditions of the National Bituminous Coal Wage Agreement of 1988 relative to the provision of medical benefits for unit employees or by failing and refusing to provide information requested by the Union which

is necessary for, and relevant to, its performance of its function as the exclusive representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in effect all terms and conditions of the collective-bargaining agreement with the Union relative to the provision of medical benefits for the employees in the following appropriate unit:

All employees of Respondent engaged in the production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal (except by waterway or rail not owned by Respondent), repair and maintenance work normally performed at the mine site or at a central shop of Respondent and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Respondent, excluding, all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

(b) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to continue in effect all terms and conditions of the collective-bargaining agreement with the Union relative to the provision of medical benefits for unit employees, as provided in the remedy section of this decision.

(c) On request, furnish the Union information that is relevant and necessary to its role as the exclusive collective bargaining representative of the unit employees.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records and reports, and other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Seth, West Virginia, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be

posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with District 17, United Mine Workers of America, by failing and refusing to continue in effect all terms and conditions of the National Bituminous Coal Wage Agreement of 1988 relative to the provision of medical benefits for unit employees or by failing and refusing to provide information requested by the Union which is necessary for, and relevant to, its performance of its function as the exclusive representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in effect all terms and conditions of the collective-bargaining agreement with the Union relative to the provision of medical benefits for the employees in the following appropriate unit:

All employees of Respondent engaged in the production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(except by waterway or rail not owned by Respondent), repair and maintenance work normally performed at the mine site or at a central shop of Respondent and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Respondent, excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL make unit employees whole for any loss of benefits or other expenses suffered as a result of Respondent's failure to continue in effect all terms and conditions of the collective-bargaining agreement with the Union relative to the provision of medical benefits for unit employees, as provided in the remedy section of this decision.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

KELSO COAL CO., INC.